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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,001	02/05/2004	Michelle Lu	680.0045USX	5377
7590	09/07/2005		EXAMINER	
CHARLES N.J. RUGGIERO, ESQ. OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P. ONE LANDMARK SQUARE, 10th FLOOR STAMFORD, CT 06901-2682			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/773,001	LU ET AL.
	Examiner Susan D. Coe	Art Unit 1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 July 2005.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-10, 14 and 16-30 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-13, 15 and 31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/2005</u> .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

1. The amendment filed July 5, 2005, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claim 31 has been added.
3. Claims 1-31 are pending.
4. In the reply filed on February 25, 2005, applicant elected without traverse Group II, claims 11-16, now also including claim 31, *Salvia miltorrhiza* for species A and prevention and/or reduction in appearance and/or depth of lines and/or wrinkles for species B.
5. Claims 1-10, 14, and 16-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 25, 2005.
6. Claims 11-13, 15, and 31 are examined on the merits solely in regards to the elected species. Please note that previously examined claim 16 is now withdrawn from consideration because the elected species of prevention and/or reduction in appearance and/or depth of lines and/or wrinkles has been cancelled from this claim. Thus, the claim no longer contains any elected species.

***Claim Rejections - 35 USC § 112***

7. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in the previous Office action.

Applicant argues that prevention of lines and wrinkles has been cancelled from the claims; therefore, the rejection has been overcome. However, claim 15 still reads on prevention

of the signs of aging which is examined only in regards to the elected species. Thus, claim 15 is still considered to not be enabled because it is drawn to prevention of lines or wrinkles.

***Claim Rejections - 35 USC § 103***

8. Claims 11-13, 15, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. Pub. No. 06-100412, Japanese Pat. Pub. No. 61-271210, US Pat. No. 5,972,341, and US Pat. No. 5,968,423 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As discussed in the previous Office action, the references taken together are considered to teach reducing skin lines and wrinkles using neem seed cell broth and *Salvia miltorrhiza* extract.

Please note that applicant has amended the claims to use the transitional phrase "having" or "has." According to MPEP section 2111.03, "Transitional phrases such as 'having' must be interpreted in light of the specification to determine whether open or closed claim language is intended." Applicant's specification provides numerous embodiments with several different active ingredients. Thus, "having" or "has" is interpreted to be equivalent to "comprising."

***Double Patenting***

9. Claims 11-13, 15 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-18 of Application No. 10/845,603 in view of CN 109752 for the reasons set forth in the previous Office action.

Applicant has requested deferral of this rejection until time of allowance. For the time being, this provisional rejection is still considered valid but will be reassessed if allowable subject matter is indicated in this application.

***Terminal Disclaimer***

10. The terminal disclaimer filed on July 5, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/040,242 has been reviewed and is accepted. The terminal disclaimer has been recorded.

11. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

  
9-1-05

Susan D. Coe  
Primary Examiner  
Art Unit 1655